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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 NATHAN D. CAMPBELL,

9 *Petitioner,*

10 vs.

11
12 STATE OF NEVADA, *et al.*,

13 *Respondents.*
14

Case No. 2:13-cv-01736-JAD-GWF

ORDER

15 This matter brought by a then state pretrial detainee comes before the Court for initial
16 review.

17 The papers presented are subject to multiple substantial defects.

18 First, petitioner did not properly commence the action by either paying the filing fee or
19 filing an application to proceed *in forma pauperis* on the Court's required form with all required
20 attachments. Petitioner neither paid the filing fee nor filed a pauper application.

21 Second, given the nature of the paper that he actually filed, petitioner would have to
22 pay the \$350.00 filing fee for a civil action or seek to pay that fee in installments under the
23 Prison Litigation Reform Act. Although the Clerk of Court docketed the action as a habeas
24 action, petitioner did not file a petition for a writ of habeas corpus. He filed a petition for a writ
25 of mandamus. Under 28 U.S.C. § 1914(a), "[t]he clerk . . . shall require the parties instituting
26 any civil action, suit or proceeding . . . whether by original process, removal or otherwise, to
27 pay of filing fee of \$350, except that on application for a writ of habeas corpus the filing fee
28 shall be \$5." A petition for a writ of mandamus, again, is not a habeas petition.

1 Third, petitioner did not use a required pleadings form. Under the local rules, he must
2 use either the Court's required complaint form or a habeas petition form. Petitioner may not
3 submit an entirely handwritten pleading on note paper as he did here.

4 Fourth, petitioner may not proceed directly against the State of Nevada in federal court
5 due to the state sovereign immunity recognized by the Eleventh Amendment. State sovereign
6 immunity bars an action against the State in federal court regardless of the relief sought. *E.g.*,
7 *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 101-02 (1984).

8 Fifth, petitioner presents no allegations that action was taken pursuant to official
9 municipal custom, practice or policy such as would support a claim against Clark County.

10 Sixth, to the extent that petitioner seeks entry of a federal court order interfering with
11 pending state criminal proceedings, the relief sought is barred under the abstention doctrine
12 of *Younger v. Harris*, 401 U.S. 37 (1971), absent extraordinary circumstances not evident from
13 the papers on file herein.

14 Seventh, the relief sought, issuance of a writ of mandamus directly to the state courts
15 overturning their actions, would constitute an exercise of appellate jurisdiction by this lower
16 federal district court over the state and municipal courts. Petitioner reinforces the point that
17 he is seeking such an exercise of appellate jurisdiction by seeking an order from this alleged
18 "higher court" to the "lower" state and municipal courts. However, a federal district court does
19 not have appellate jurisdiction over a state or municipal court, whether by direct appeal,
20 mandamus, and/or an exercise of supervisory appellate jurisdiction. *See, e.g. Rooker v.*
21 *Fidelity Trust Co.*, 263 U.S. 413 (1923); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir.
22 2003). In seeking to have this federal district court issue a writ of mandamus directing the
23 state and municipal courts in the handling of their cases, petitioner unquestionably has sought
24 to invoke appellate jurisdiction by this Court over those courts. The Court has no such
25 jurisdiction.

26 Due to these multiple defects, the petition in this improperly-commenced action will be
27 dismissed without prejudice.

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1 It does not appear that a dismissal without prejudice to a new action would materially
2 impact adjudication of any issue of substance in a promptly filed new action or otherwise
3 cause substantial prejudice.¹

4 **IT THEREFORE IS ORDERED** that this action shall be DISMISSED without prejudice
5 to the filing of a new pleading on a required form with a pauper application with all required
6 financial attachments in a new civil action under a new docket number.²

7 **IT FURTHER IS ORDERED** that, to the extent required in this procedural context, a
8 certificate of appealability is DENIED. Jurists of reason would not find the dismissal of this
9 improperly-commenced action to be either debatable or incorrect, given the absence of any
10 substantial prejudice to petitioner from the dismissal without prejudice. See text at note 1 and
11 note 1.

12 The Clerk shall enter final judgment accordingly, dismissing this action without
13 prejudice.

14 DATED: November 8, 2013.

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18 JENNIFER A. DORSEY
United States District Judge

19 _____
20 ¹Petitioner sought in the petition to restrain a then pending state criminal prosecution. No federal
21 limitations period applies to any request for federal habeas relief as to a state criminal proceeding that has not
22 yet resulted in a state judgment of conviction. Moreover, to the extent that a civil rights limitations period
23 might be of concern, the limitations period for actions arising out of Nevada is two years.

24 Moreover, it appears from review of the relevant court and custodial websites that petitioner's state
25 criminal proceedings in at least the Nevada Eighth Judicial District concluded in a plea with sentencing to time
26 served. He is in neither state nor local custody at this time. To the extent that petitioner sought to challenge
27 proceedings in other municipal and/or justice courts, a dismissal without prejudice of this action would not
28 materially impact the analysis of any substantial issue in a promptly and properly commenced new action. No
prejudice of substance thus can result from a dismissal of this action without prejudice.

While the imaged electronic copy of the handwritten petition is difficult to read readily, the physical
original in the "day file" is readily legible.

²The Court will not direct the Clerk to send forms given that petitioner no longer is in custody. He has
provided no notice of change of address.